TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. ~~620~~. 844

CALVIN AMORY STEVENS AND JOHN T. TERRY

Appellants,

vs.

THE MEMPHIS CLARKSVILLE AND LOUISVILLE RAILROAD COMPANY, AND THE LOUISVILLE, NASHVILLE AND GREAT SOUTHERN RAILROAD COMPANY.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE MIDDLE DISTRICT OF TENNESSEE.

FILED OCTOBER 8, 1881.

UNITED STATES SUPREME COURT.

No.

CALVIN AMORY STEVENS and JOHN T. TERRY, on behalf of the holders of Internal Improvement Bonds of the State of Tennessee, issued to the Memphis, Clarksville and Louisville Railroad Company,

vs.

THE MEMPHIS, CLARKSVILLE & LOUISVILLE and LOUISVILLE, NASHVILLE & GREAT SOUTHERN RAILROAD COMPANIES.

TRANSCRIPT OF RECORD.

Appeal from the Circuit Court of the United States, Sixth Judicial Circuit, Western District of Tennessee.

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United States Circuit Court.

Sixth Judicial Circuit, Western District of Tennessee.

IN EQUITY.

Calvin Amory Stevens, on behalf of the Holders of Internal Improvement Bonds of Tennessee, issued to the Memphis, Clarksville and Louisville Railroad Company,

versus

The Memphis, Clarksville and Louisville Railroad Company et al.

BILL FOR RELIEF.

E. L. ANDREWS and
GEORGE HOADLY,
Solicitors, and of Counsel for Complainant.

United States Circuit Court,

Sixth Judicial Circuit, Western District of Tennessee.

IN EQUITY.

To the Honorable, the Judges of the Circuit Court of the United States for the Sixth Judicial Circuit and Western District of Tennessee.

Your orator, Calvin Amory Stevens, who is a citizen of the State of New York, brings this, his bill of complaint, against the Memphis, Clarksville and Louisville Railroad Company, and the Louisville, Nashville and Great Southern Railroad Company, which are citizens of the State of Tennessee, and are corporations organized, existing, and transacting business in said State by virtue of, and under, an act of the General Assembly of said State.

And thereupon your orator, complaining, shows unto your Honors that he brings this bill of complaint, as well on behalf of all other holders of the Internal Improvement bonds issued by the State of Tennessee to the Memphis, Clarksville and Louisville Railroad Company, who may join in the prosecution of this suit and contribute to the expenses thereof, as on his own behalf as a holder of said bonds.

Your orator shows that the Memphis, Clarksville and Louisville Railroad Company is a body, politic and corporate, chartered by acts of the General Assembly of the State of Tennessee. The object and purpose of the creation of said corporation was the construction, completion, and, thereafter the operation and management of a line of railway for the transportation of passengers and freight from the city of Memphis, in the State of Tennessee, through the territory of the State of Tennessee, to a point on the Cumberland river.

For this purpose powers were granted to said corporation, as are declared in the several charters and acts of incorporation. The said corporation was authorized to borrow money for the purposes of the enterprise. It was likewise authorized to impose liens and execute mortgages upon its property to provide for, and insure the payment of, its liabilities.

Your orator makes part of this, his bill of complaint, the said several charters and acts, with their several amendments, passed by the legislature of Tennessee, and attaches copies thereof, marked Exhibit A.

Your orator shows that the General Assembly of the State of Tennessee, by an act, passed the 11th of February, in the year 1852, determined to lend to the railroad companies within said State, and specified in said act, the aid of its credit, for the completion of their several lines of railway.

The plan of that legislation was that each railroad company should procure a certain amount of *bona fide* subscriptions for its capital stock, and that it should have graded, bridged, and ready for the reception of rails, a certain number of miles of its road. By means of these preliminary requirements, assurance was obtained that each railroad company would be competent to fulfill the obligations it was to incur under the statute hereinafter set forth. The period of four years was allowed for the completion of each section of a road, the first section being required to

be thirty, and the others twenty miles in length. The act proceeds to authorize and give validity to bonds of the State, which the governor was required to issue to each company. The amounts of the bonds were to be ascertained by the length of each railroad within the State, and the proceeds of the bonds were to be exclusively applied to the payment of the railroad iron, and equipments of the road to which they were issued. The president of each railroad company, assisted by a commissioner appointed by the governor, was to negotiate the sale of the bonds issued to his company. The act was made a public law for all purposes of notice, and a system of numbering was adopted for distinguishing each bond, and identifying the company to which it was issued. The tenor of the act which gave existence to the bonds, was, that each company became liable upon, and bound to perform, the obligations contained in, and represented by, the bonds loaned to it. Each company was to pay, from its own means, the interest upon the bonds loaned to it, as the same matured from time to time, and also to pay and discharge the principal debt, as it was expressed upon said bonds, when the same matured.

Your orator shows that the sale of the said bonds was to be the means of raising the money requisite for completing the superstructure, laying the rails, and providing the equipment of the roads. The bonds loaned to each company were to be payable in such places in the United States as its president might designate. In order to insure the said sale, and make a market for said bonds, and to create confidence in the public, and on the part of persons to whom said bonds might be offered for sale, and who might become the purchasers of the same, that each company would punctually pay the principal and interest of the bonds loaned to it, or, in case of its failure, that ample security should be provided therefor, which might be easily realized, it was provided by the statute, that "so soon as the bonds of the State shall have been issued for the first section of the road, they shall constitute a lien upon said section,

without a deed from the company," and the "State of Tennessee, upon the issuance of said bonds, and by virtue of the same, shall be invested with said lien or mortgage, without a deed from the company for the payment by said company of said bonds, with the interest thereon, as the same becomes due, and with a like mortgage or lien, without a deed from the company, upon the additional sections, and upon the entire road, including the stock, for the payment of all the bonds issued to the company, and for the interest accruing thereon." This statutory lien was to be operative at once, and without conveyance or assurance of any kind from the corporations, and was to be superior to all other liens, upon the entire road and property of any corporation so receiving such public assistance, in the State of Tennessee. The statute was to be a substitute for a mortgage executed by each railroad company, for the purposes named in the act.

By the terms of an act of the same session provision was made for a public and official record of the issues of bonds to the several roads. The Comptroller of the State was required to sign and number the coupons of the bonds issued to each railroad, and the Secretary of State was required to number and countersign the bonds; and upon delivering bonds to the several companies, the Secretary of State was required to take a receipt, reciting the number, date, and amount of the bonds so delivered. These receipts were to be taken in a well-bound book, to be deposited in the office of the Secretary of State.

The General Improvement law, above referred to, is herewith set out fully and at length, to wit:

AN ACT to Establish a System of Internal Improvements in this State.

SECTION I. *Be it enacted by the General Assembly of the State of Tennessee*, That whenever the East Tennessee and Virginia Railroad Company shall

have procured *bona fide* subscriptions for the capital stock in said company to an amount sufficient to grade, bridge, and prepare for the iron rails the whole extent of the main trunk line proposed to be constructed by said company, and it shall be shown by said company to the Governor of the State that said subscriptions are good and solvent, and whenever said company shall have graded, bridged, and shall have ready to put down the necessary timbers for the reception of rails, and fully prepared a section of thirty miles of said road at either terminus, in a good and substantial manner, with good materials, for putting on the iron rails and equipments, and the Governor shall be notified of these facts, and that section, or any part thereof, is not subject to any lien whatever, other than those created in favor of the State by the acts of 1851–2, by the written affidavit of the Chief Engineers and President of said company, together with the written affidavit of a competent engineer by him appointed, at the cost of the company, to examine said section, then said Governor shall issue *to said company* coupon bonds of the State of Tennessee, to an amount not exceeding eight thousand dollars per mile on said section, and on no other condition, *which bonds shall be payable at such place in the United States as the President of the Company may designate*, bearing an interest of six per centum per annum, payable semi-annually, and not having more than forty nor less than thirty years to mature.

SEC. 2. *Be it enacted*, That the bonds before specified shall not be used by said company for any other purpose than for procuring the iron rails, chairs, spikes, and equipments for said section of said road, and for putting down said iron rails, and the Governor shall not issue the same unless upon the affidavit of said President, and a resolution of a majority of the Board of Directors, for the time being, that said bonds shall not be used for any other purpose than for procuring the said iron rails, chairs, spikes, and equipments for said section, and for putting down said iron rails, and the Governor shall have power to appoint a commissioner to act under oath, in conjunction with said President, in negotiating said bonds for the purposes aforesaid, and to

act in any other matters pertaining to said company, where the interest of the State, in the opinion of the Governor, may require it.

SEC. 3. *Be it enacted, That so soon as the* BONDS *of the State shall have been issued for the first section of the road as aforesaid,* THEY *shall constitute a lien upon said section so prepared as aforesaid,* including the road-bed, right of way, grading, bridges, and masonry, upon all the stock subscribed for in said company, and upon said iron rails, chairs, spikes, and equipments, when purchased and delivered, and the State of Tennessee, upon the issuance of said bonds, and by virtue of the same shall be *invested* with *said* lien or mortgage without a deed from the company, *for the payment by said company of said bonds,* with the interest thereon as the same becomes due.

SEC. 4. *Be it enacted,* That when said company shall have prepared as aforesaid a second section, or any additional number of sections, of twenty miles each of said road, connecting with a section already completed for the iron rails, chairs, spikes, and equipments, as provided in the first section of this act, and the Governor shall be notified of the facts as before provided, he shall, in like manner, issue to said company like bonds of the State of Tennessee, to an equal amount with that before issued under the first section of the act for each and every section, of twenty miles of said road so prepared as aforesaid, but upon the terms and conditions hereinbefore provided, and upon the issuance of the said bonds, the State of Tennessee shall be *invested* with *a like mortgage or lien* without a deed from said company, upon said stock, and upon *said first and additional section or sections* of said road so prepared, upon the rails and equipments put, or to be put, upon the same, *for the payment of said bonds and the accruing interest thereon.* Provided, that if the last section of said road shall be less than twenty miles, or if the railroad proposed to be constructed by any company hereinafter specified, shall be less than thirty miles in extent, bonds of the State shall be issued for such section, or such railroad, as may be less than thirty miles in extent for an amount in proportion to the distance, as provided in this act, but upon the same terms and conditions in all respects, as required in

regard to the bonds to be issued for the other sections of said road. And when the whole of said road shall be completed the State of Tennessee shall be *invested with a lien, without a deed from the company*, upon the entire road, including the stock, right of way, grading, bridging, masonry, iron rails, spikes, chairs, and the whole superstructure and equipments, and all the property owned by the company as incident to or necessary for its business; and all depots, and depot stations, *for the payment of all of said bonds issued to the company* as provided in this act, and for the interest accruing on said bonds. And after the Governor shall have issued bonds for the first section of the road, it shall not be lawful for the said company to give, create, or convey to any person or persons, or body corporate whatever, any lien, incumbrance, or mortgage of any kind which shall have priority over, or come in conflict with, the lien of the State herein secured; and any such lien, incumbrance, or mortgage shall be null and void as against said lien or mortgage of the State, which shall have priority over all other claims existing or to exist against said company.

SEC. 5. *Be it enacted, That it shall be the duty of said company to deposit in the Bank of Tennessee, at Nashville, at least fifteen days before the interest becomes due from time to time, upon said bonds issued as aforesaid, an amount sufficient to pay such interest, including exchange or necessary commissions*, OR SATISFACTORY EVIDENCE THAT SAID INTEREST HAS BEEN PAID OR PROVIDED FOR, and if said company fail to deposit said interest as aforesaid, or furnish the evidence aforesaid, it shall be the duty of the Comptroller to report that effect to the Governor, and the Governor shall immediately appoint some suitable person or persons, at the expense of the company, to take possession and control of said railroad, and all the assets thereof, and manage the same and receive the rents, issues, profits, and dividends thereof, whose duty it shall be to give bond and security to the State of Tennessee, in such penalty as the Governor may require, for the faithful discharge of his or their duty as receiver or receivers, to receive said rents, issues, profits, and dividends, *and pay over the same, under the direction of the Governor, toward the liquida-*

tion of such unpaid interest. And if said company fail or refuse to deliver up said road to the person or persons so appointed by the Governor, the person so appointed shall report that fact to the Governor, who shall forthwith issue his warrant, directed to the Sheriffs of the counties through which the road shall run, commanding them to take possession of said road, fixtures, and equipments, and everything pertaining thereto, and place the said receiver in full and complete possession of the same, and said receiver so appointed shall continue in the possession of said road, fixtures, and equipments, and run the same, and manage the entire road, until a sufficient sum shall be realized, exclusive of the costs and expenses incident to said proceedings, *to pay off and discharge the interest as aforesaid, due on said bonds,* which being done, the receiver shall surrender said road and fixtures and equipments to said company. The comptroller shall from time to time settle the accounts with the receiver, and the balance shall be deposited in the treasury of the State. The comptroller is authorized, and it is made his duty, upon his warrant to draw from the treasury any sum of money necessary to meet the interest on such bonds, *as may not be provided for by the company, as provided for in this act,* and the comptroller shall report thereof to the general assembly from time to time.

SEC. 6. *Be it enacted, That if said company shall fail or refuse to pay any of said bonds when they fall due,* it shall be the duty of the Governor to notify the Attorney-General of the district in which is situated the place of business of said company of the fact; and thereupon, said Attorney-General shall forthwith file a bill against said company in the name of the State of Tennessee, in the Chancery or Circuit Court of the county in which is situated said place of business, setting forth the facts, and thereupon said Court shall make all such orders and decrees in said cause as may be deemed necessary by the Court, *to receive the payment of said bonds, with the interest thereon, and to indemnify the State of Tennessee, against any loss on account of the issuance of said bonds,* by ordering the said railroad to be placed in the hands of a receiver; ordering the sale of said road, and all the property and assets attached thereto

or belonging to said company, or in such other manner as the Court may deem best for the interest of the State.

SEC. 7. *Be it enacted*, That at the end of five years after the completion of said road, said company shall set apart one per centum per annum upon the amount of bonds issued to the company, and shall use the same in the purchase of bonds of the State of Tennessee, which bonds the company shall pay into the treasury of the State, after assigning them to the Governor, and for which the Governor shall give said company a receipt, *and as between the State and said company, the bonds so paid in shall be a credit on the bonds issued to the company; and bonds so paid in, and the interest accruing thereon, from time to time, shall be held and used by the State as a sinking fund for the payment of the bonds issued to the company, and should said company repurchase any of the bonds issued to it under the provisions of this act, they shall be directed as aforesaid*, AND CANCELED. And should said company fail to comply with the provisions of this section, it shall be proceeded against, *as provided in the 5th section of this act.*

SEC. 8. *Be it enacted*, That the President of the company shall make semi-annual reports, under oath, to the Governor, until the completion of said road, setting forth fully the condition of the road and the company, and after its completion he shall report to the Governor annually, showing the financial condition of the company, giving a statement of the trade and travel upon the road, the receipts and expenditures, net earnings, and dividends, and what per cent. is paid on the stock to the stockholders. And said reports shall be consolidated every two years by the President of said company, and said consolidated reports shall be laid before the Governor by the first of September, every two years after the completion of the road, and the Governor shall lay said report before the Legislature for its action, at the next meeting thereof, after said report is made.

SEC. 9. *Be it enacted*, That it shall not be lawful for any officer of said company to engage in any speculation or dealing, directly or indirectly, in any real estate on or along the line, at any of the de-

pots or depot stations, or at either terminus of said road, until after the road is completed, and every officer of the company, before entering upon the duties of his office, shall take an oath in writing, before any judge or justice of the peace in this State, that he will not knowingly violate the provisions of this act, and that he will faithfully perform the duties of his office; and if any such officer of the company, or other person taking an oath as herein provided, knowingly swear falsely, he shall be deemed guilty of perjury, and subject to all the pains and penalties thereof, and every affidavit required under this act may be sworn to before any judge or justice of the peace in this State.

SEC. 10. *Be it enacted*, That the provisions of this act shall extend to and embrace the Chattanooga, Harrison, Georgetown, and Charlestown Railroad Company, the Nashville and Northwestern Railroad Company, the Louisville and Nashville Railroad Company, the Southwestern Railroad, the McMinnville and Manchester Railroad Company, the Memphis and Charleston Railroad Company, the Nashville and Southern Railroad Company, the Mobile and Ohio Railroad Company, the Nashville and Memphis Railroad Company, the Nashville and Cincinnati Railroad Company, the East Tennessee and Georgia Railroad Company, the Memphis, Clarksville, and Louisville Railroad Company, and the Winchester and Alabama Railroad Company, so far as the main trunk roads to be constructed by said companies lie within the limits of this State, and not otherwise, and said companies shall have all the powers and privileges and be subject to all the restrictions and liabilities contained in this act.

SEC. 11. *Be it enacted*, That the gauge of all of said railroads (unless connecting with roads in other States of a different gauge) shall be the same as that of the Nashville and Chattanooga Railroad, and not otherwise, and the iron rails to be put upon said road shall not be less than eighty tons to the mile, if the U rail is used, and not less than one hundred tons to the mile if the T rail is used.

SEC. 12. *Be it enacted, That the State of Tennessee expressly reserves the right to enact by the Legislature thereof, hereafter, all such laws as may be deemed neces-*

sary to protect the interest of the State, and to secure the State against any loss IN CONSEQUENCE OF THE ISSUANCE OF BONDS UNDER THE PROVISIONS OF THIS ACT. BUT IN SUCH MANNER AS NOT TO IMPAIR THE VESTED RIGHTS OF THE STOCKHOLDERS OF THE COMPANIES.

SEC. 13. *Be it enacted*, That it shall be the duty of the Governor, from time to time, when there shall be reliable information given to him that any railroad company shall have fraudulently obtained the issuance of bonds of this State, or shall have obtained any of said bonds contrary to the provisions of this act, he shall notify the Attorney-General of this State, whose duty it shall be forthwith to institute, in the name of the State, a suit in the Circuit or Chancery Court of the county of the place of business of the company, setting forth the facts; and when the fact shall satisfactorily appear to the Court, that any of said bonds shall have been fraudulently obtained, or obtained contrary to the true intent, meaning, and provisions of this act, then, and in such case, the Court shall order, adjudge, and decree, that said road lying in the State, with all the property and assets of said company, or a sufficiency thereof, shall be sold, and the proceeds shall be paid into the treasury, *and it shall be the duty of the comptroller immediately to vest the same in stocks, creating a sinking fund, as provided for in the 7th section of this act;* and said company shall forfeit all rights and privileges under the provisions of this act, and the stockholders thereof shall be individually liable *for the payment of the bonds so fraudulently obtained* by such company, and for all other losses that may fall upon the State in consequence of the commission of any other fraud by such company, excepting such stockholders as may show to the said Court that they were ignorant of or opposed to the perpetration of such frauds by the company.

SEC. 14. *Be it enacted*, That in the event any of the roads, fixtures, or property belonging to any of said roads shall be sold under the provisions of this act, it shall be the duty of the Governor to appoint an agent for the State, who shall attend said sale and protect the interest of the State, and shall, if necessary to protect said interest, buy in said road or property, in the name of the State; and in case said

agent shall purchase said road for the State, *the Governor shall appoint a receiver, who shall take possession of said road and property, and use the same as provided for in the 5th section of this act*, and said receiver shall settle with the comptroller semi-annually until the next meeting of the General Assembly.

SEC. 15. *Be it enacted, That this act shall be deemed and taken to be a public act as to all purposes of notice: Provided*, That should any of the companies hereinbefore enumerated have, *bona fide*, and before the passage of this act, purchased or otherwise contracted for, upon their own credit, the necessary iron, rails, spikes, equipments, for the road or roads, or any section or sections thereof, the bonds of the State shall be issued to such company or companies, as hereinbefore prescribed.

SEC. 16. *Be it enacted*, That the railroad companies specified in this act, and all other railroad companies hereafter incorporated in this State, shall have power to construct their roads so as to cross each other, if necessary, by the main trunks or branches, or to unite with each other, or with the branches thereof; and it shall be the duty of said companies, when required, to receive on their roads and branches, the full loaded freight cars from each other and the branches thereof, and transport the same to their destination, and return them, without charging for the transportation of the goods, wares, merchandise, and produce therein, any greater rate of freight than they charge for similar goods, wares, merchandise, and produce in their own cars. *Provided*, that said companies shall not be compelled to receive such cars on their roads, unless they are constructed with the same gauge, and are of equal strength with their own cars, of which the principal engineer of the road of which it is proposed to require said cars to be transported shall be the judge. *Provided*, that the bonds of the State, proposed to be issued to the Memphis and Charleston Railroad Company under the provisions of this act, shall, in event of their issuance to said company, be divided between the main trunk line, proposed to be constructed by said company, and the branch thereof, from the town of Moscow to the town of Sommerville, in the county of Fayette, according to the respective lengths of

said main trunk line and said branch; and the lien of the State, as herein secured, shall continue upon said main line, and also upon said branch, until said bonds and interest are paid, as heretofore provided.

SEC. 17. *Be it enacted*, That in all cases where bonds may be issued to any of said companies, as provided in this act, the State of Tennessee shall be entitled to two directors in each company, to be appointed by the Governor of the State, to which bonds may be issued.

SEC. 18. *Be it enacted*, That when the Nashville and Chattanooga Railroad Company shall have completed twenty-five miles of their road, in addition to the eighty miles specified in the second section of the act, passed the 4th of February, 1848, chapter 169, then the Governor of the State shall indorse and guarantee, in the name and on behalf of the State of Tennessee, the bonds of said company to the amount of one hundred and seventy-five thousand dollars, and in like manner, when another section of twenty-five miles of said road shall have been completed, the Governor of the State, in the name and on behalf of the State, shall indorse and guarantee the bonds of said company to the additional amount of one hundred and seventy-five thousand dollars, and said bonds are to be indorsed and guaranteed in the same manner, and the same indemnity is to be furnished by said company for the protection of the State, and the like lien is to be given, and the same character of bonds are to be indorsed and guaranteed, as provided in the said act of the 4th of February, 1848.

SEC. 19. *Be it enacted*, That the aid contemplated by the first section of this act, shall only be extended to one of the roads chartered under the names of the Nashville and Southern Railroad Company, and the Tennessee and Alabama Railroad Company. *Provided*, That the first of said roads which shall secure the subscription of the capital stock, for the construction of the same, shall be entitled to such aid. *Provided further*, If the Nashville and Southern Railroad Company first obtained the stock in their railroad, as provided in the first section of this act, and shall construct their road to the Tennessee river, to the Mississippi State line, or to a point between the

Tennessee river and the Mississippi State line, then the Tennessee and Alabama Railroad Company may construct their road from the Alabama State line to intersect with the Nashville and Southern Railroad, at such point as said company may select, and the provisions of this act shall extend to the Tennessee and Alabama Railroad, from said Alabama State line to said point of intersection. But if the Tennessee and Alabama Railroad Company first obtain the stock in their railroad, as provided in the first section of this act, and construct their road to the Alabama line, in the direction of Florence, then the Nashville and Southern Railroad Company may construct their railroad from the Tennessee river, the Mississippi State line, or any point between the Tennessee river and the Mississippi State line, so as to intersect the Tennessee and Alabama Railroad, at such point as the company may select, and the provisions of this act shall extend to said railroad from said point of intersection to the Tennessee river, the Mississippi State line, or to any point between the Tennessee river, and the Mississippi State line. And the Nashville and Southern Railroad Company, and the Tennessee and Alabama Railroad Company, shall have power to unite or consolidate their stock if they deem it advisable, and upon such terms as the companies may agree upon. *Provided also*, that if the Memphis and Nashville Railroad Company shall not comply with the requirements of this act, and complete thirty miles of their road within four years; or if the Nashville and Northwestern Railroad Company shall, in like manner, fail to complete thirty miles of their road within four years, then the Tennessee Central Railroad Company shall have all the rights, powers, privileges, and benefits intended to be given by this act, to those companies respectively, under the same restrictions and limitations; but the said Tennessee Central Railroad Company shall be allowed two years longer time, in which to prepare thirty miles of their road-bed for the reception of the iron rails, and may then receive the aid of the State, in the issuance of bonds for their benefit, as prescribed in this act. *Provided*, That this provision shall not preclude any subsequent legislature from extending the time of four

years, in which to complete any section of thirty miles of said Nashville and Memphis, or Nashville and Northwestern Railroad. *That each of said companies is hereby authorized and required to appoint an agent or agents to whom the bonds shall be delivered, and whose duty it shall be to control said bonds, and see that they are exclusively applied to the payment of the railroad iron and equipments, as provided for in this act, and for no other purpose whatever.* And the said agent, before he receives the bonds of the State, shall give bond and security, to be approved by the Governor and payable to the State of Tennessee, for the application of the bonds, or the proceeds thereof, to the purposes aforesaid. *Provided*, That before any bonds, under the provisions of this act, shall be issued to any agent of any railroad contemplated by this act, the president of any such company shall first deposit in the office of the Secretary of State, a full, true, and accurate list of all the stockholders, with the sums subscribed by each and every stockholder.

SEC. 20. *Be it enacted*, That no road embraced in this act shall be entitled to State aid unless it shall, *within four years*, complete at least one section of thirty miles, or the whole length of the road, if less than thirty miles long.

Those portions of the act of February 21st, 1852, providing for identification of the bonds, by means of public records, are as follows :

SEC. 7. *Be it further enacted*, That the different Internal Improvement Companies, to whom the bonds of the State may be loaned under the different acts of the present Legislature, shall pay the expenses of engraving and preparing the same.

SEC. 8. *Be it enacted*, That the Governor of the State shall cause to be engraved and printed, the bonds which may be issued under the acts of the present General Assembly, as a loan made to Internal Improvement Companies, and the said bonds shall bear date on the first day of January prior to their issuance, and the coupons thereto shall be payable on the first days of January and July of each year.

SEC. 9. *Be it enacted, That the coupons shall be signed and numbered by the comptroller, and the bonds shall be countersigned, sealed, and numbered by the Secretary of State, and upon delivering said bonds to the company authorized to receive the same, the Secretary of State shall take a receipt, reciting the number, date, and amount of said bonds*, in a well-bound book to be deposited in his office, and the Comptroller and Secretary of State shall each be entitled to receive twenty-five cents for each bond so prepared, to be paid by the party receiving the said bond.

Your orator shows that the State of Tennessee, by act of its General Assembly, passed on the 8th of February, 1854, increased the amount of bonds to be issued to the several "internal improvement companies from $8,000 to $10,000 per mile," and provision was made for an issue of similar bonds to be used for bridge purposes. The said act was amendatory of the act passed 11th of February, 1852, "to establish a system of internal improvement in this State," and required that the increased amount of bonds should be received, "upon the terms and conditions mentioned in the act, which this was intended to amend." By the act of February 17, 1854, the length of the sections which it was necessary for the railroads to complete before obtaining bonds of the State, was decreased from twenty to ten miles, after the completion of the first section of thirty miles. By the act of January 19, 1855, the foregoing act was amended so that the grading only of ten-mile sections was required, in lieu of the completion of said sections, as a preliminary to obtaining the issuance of bonds. The act of October 29, 1855, was amendatory of the bridge law, above mentioned.

Your orator attaches hereto copies of said acts above referred to, marked Exhibit B, and makes them a part of his bill of complaint.

Your orator shows that there was delivered on account of the Memphis, Clarksville and Louisville Railroad, and to the company of that name, internal improvement bonds of the State of Tennessee, being of the numbers, dates, and in the amounts hereinafter set forth:

6,100 to 6,119, White, B, 20	$20,000
8,295 to 8,304, White, B, 10	10,000
9,112 to 9,151, White, B, 40	40,000
9,552 to 9,851, White, B, 300	300,000
10,091 to 10,110, White, B, 20	20,000
10,231 to 10,250, White, B, 20	20,000
10,839 to 10,938, White, B, 100	100,000
11,226 to 11,394, White, B, 169	169,000
11,645 to 11,684, White, B, 40	40,000
11,685 to 11,704, White, B, 20	20,000
517 to 536, White, C, 20	20,000
537 to 716, White, C, 180	180,000
1,009 to 1,028, White, C, 20	20,000
1,489 to 1,571, White, C, 83	83,000
~~1 to 40, Green, no letter, 40~~	~~40,000~~
~~812 to 961, Green, no letter, 150~~	~~150,000~~
~~1,162 to 1,225, Green, no letter, 64~~	~~64,000~~
~~2,196 to 2,245, Green, no letter, 50~~	~~50,000~~
~~2,796 to 2,895, Green, no letter, 100~~	~~100,000~~
~~3,800 to 3,935, Green, no letter, 136~~	~~136,000~~
	$1,582,000

A copy of one of the said bonds and coupons is hereto attached, marked Exhibit C.

Your orator shows that the said bonds, to the amount of $1,582,000, were received by or on behalf of the Memphis, Clarksville and Louisville Railroad Company, through the officers appointed in the act of February 11, 1852, and were, by the said company negotiated and sold, in pursuance of law, to *bona fide* holders. The proceeds of these bonds were to be so applied as to enable the company to which they were loaned, to earn the interest and principal moneys of the said obligations.

About nine hundred and ninety-six of the said bonds are now outstanding in the hands of *bona fide* holders. Your orator is the owner and holder of thirty of said bonds, of $1,000 each, being of the numbers, dates, and descriptions in all respects of the bonds heretofore described and issued to the Memphis, Clarksville and Louisville Railroad Company by the State of Tennessee.

Your orator is likewise the holder of seven coupons, attached to each one of said bonds, the same representing the installments of interest for three and one-half consecutive years, beginning with the installment that fell due on the 1st of January, 1876, and including the installment of the first day of January, 1879, and amounting in the aggre-

gate to twenty-one per cent. of the par or principal amount of each one of the aforesaid bonds.

Your orator shows that holders of said bonds are very numerous, and reside in foreign countries, as well as in different parts of the United States. Their names are in great part unknown to your orator, and they are therefore not made parties hereto.

And further complaining, your orator shows that the Memphis, Clarksville, and Louisville Railroad Company, and the other respondent herein, has failed to comply with the provisions of the general internal improvement law above recited, for the payment of the said installments of interest on your orator's bonds, and on the bonds of other holders in like situation; and the coupons of the bonds aforesaid are now in default and unpaid.

Your orator charges like defaults upon the coupons of all other of said bonds issued to said company, that have fallen due and have become payable by the Memphis, Clarksville and Louisville Railroad Company, according to the terms of the statute, on the first day of January, 1876; on the first day of July, 1876; on the first day of January, 1877; on the first day of July, 1877; on the first day of January, 1878; on the first day of July, 1878; and on the first day of January, 1879. The State of Tennessee is likewise in default on said coupons.

Your orator is entitled to the enforcement of the lien aforesaid, for the payment of interest on his bonds, and those of other holders, and for the appointment of receivers, under the powers and according to the usages of courts of equity, and for the purposes described in the statute.

Your orator further shows that it is provided by the statute, that upon default in the payment of interest by any of the Internal Improvement Companies, upon the bonds issued to it, the right to impound the rents, issues, profits, and dividends shall accrue, for the purpose of paying over the same toward the liquidation of the unpaid interest. For the execution of that purpose, it provides that some suitable person or persons shall be appointed as receivers, to take possession and control of said

railroad, and all the assets thereof. Said receiver is to continue in possession and manage the entire road, until a sufficient sum shall be realized, exclusive of the costs and expenses incident to such proceedings, to pay off and discharge the interest due on the bonds.

And now your orator shows that the said railroad company pretends and claims that the aforesaid lien on its property is satisfied and discharged, without payment of the interest or principal of your orator's bonds, and that it is also absolved from the obligation which it assumed by the acceptance and use of the said bonds to pay the interest thereon.

It claims that the discharge of said incumbrance has been effected by and through the means of certain legislation, enacted in the years 1870 and 1871, many years after the sale of the said bonds, and while the same were outstanding and unpaid, as they still remain, in the hands of *bona fide* purchasers thereof.

Your orator shows that the said pretense is invalid and fraudulent, and he charges the case to be as follows:

During the late civil war the railroad companies did not pay the interest on the bonds issued to them, and after the war they still continued in great part in default in making the payments of interest on the said bonds. The State of Tennessee had likewise been in default during the same time. The market value of the bonds had meanwhile fallen very greatly, and the securities were very much depreciated, to about fifty per cent. or less of their par value.

Under these circumstances, the project was conceived of avoiding the liabilities of the corporations for the payment of the bonds loaned to them, and of enabling the State to reduce her unsecured debt at the expense of the holders of the internal improvement bonds. That project was to be enforced by treating the lien on the railroads as the absolute property of the State, without regard to the trust in favor of the holders of the bonds whose moneys the companies had received. The legislature was to be induced to proceed upon this basis, and to sell and assign the lien on each road, in consideration of the receipt by the State of

an amount of its bonds from each company, without regard to whether they were the bonds issued to and the obligations of the company delivering them, and were entitled to the lien on its road. The procurement of such acts of the General Assembly of Tennessee was sought, as it was deemed would assist in the accomplishment of this project.

Your orator shows that, in pursuance of the above scheme, the General Assembly of Tennessee was induced to pass an act, on July 5, 1870, authorizing certain commissioners, therein named, to sell the interest of the State in all the railroad companies that had failed for two consecutive years to pay the interest upon the bonds that had been issued to them severally. The act further provided "that the said commissioners can dispose of the interest of the State of Tennessee in the defaulting railroads, for a sum of money equal to the amount of the bonds of the State of Tennessee, with unpaid interest due upon them, and which bid may be discharged and satisfied by an equal amount of the bonds of the State of Tennessee, with accrued interest, legally issued by the State of Tennessee in aid of said railroad, or for any other purpose."

Your orator shows that the commissioners named in said act were unable to obtain the minimum price contemplated by the above legislation, and consequently could not effect a sale thereunder.

Your orator shows that the act of December 22, 1870, was thereupon passed, and in and by the provisions of the said act, the commissioners therein named were authorized to sell the delinquent railroads for any amount of bonds of the State, including those not secured by liens upon these roads respectively, leaving the bonds so secured by liens still outstanding and unpaid. By those provisions such legislative purpose and mandate was expressed and was directed to the commissioners named as the executive officers to carry it into effect. This was the scope and design of the legislation, and the administration of these objects was intrusted to the Governor, Comptroller, Secretary of State, and three other commissioners.

The commissioners were authorized to dispose of the roads at public or private sale, as they might judge most advisable. These sales were to be legislative acts, deriving their entire force and efficacy from the statute.

By an act subsequently passed, on November 17, 1871, "the sales made by the commissioners" were, under certain conditions, "ratified, sanctioned, and confirmed, and said commissioners are authorized and fully empowered to place said purchaser or purchasers in full possession of said road so purchased." These directions were to be executed without any other authority than the will of the General Assembly. The said acts are hereto attached, marked Exhibit D, and are prayed to be taken as a part of this bill.

Your orator shows that, in pursuance of the above legislation, and by virtue of the claim of authority derived therefrom, the commissioners proceeeded to effect a sale of the Memphis, Clarksville, and Louisville Railroad, to parties who took thes ame with full knowledge of the trusts in favor of the holders of the internal improvement bonds, as will more fully hereinafter be set forth. Of all the legislation in reference thereto, and all the proceedings thereunder, your orator has but lately become cognizant.

Your orator shows that all of the above acts and doings are void in law and fraudulent in fact. The purpose of the legislation was to convert the lien held in trust by the State for the State's benefit. The acts denominated it "to sell the State's interest," and this was to be done for any obligations of the State. The commissioners were, therefore, authorized to make such sale, and, in substance, to sell and assign the mortgage held by the State. This was a violation of the trust reposed in the State by contract with the purchasers of the bonds issued by it to the several companies. Its duty as the trustee of the security was merely to preserve it and enforce it as directed in the statute constituting the deed of trust. It could not so transfer the security, which it held in trust, as to confer a title upon another divested of the trust. The trust was

embodied in a public law, and constituted express notice to everybody. No sale of the statutory lien was authorized by the acts constituting it, and no realization or enforcement of the lien, in any manner, contemplated, save and except for the benefit of the bondholders. All of the above legislative provisions for the transfer of the lien in consideration of other obligations of the State, whether for an amount equal to the issue of the internal improvement bonds, or for a less amount, are violations of contract, unconstitutional, and void.

Your orators further show, that the said act ordered and directed a sale of the said railroad, though the principal of the internal improvement bonds had not become due. For the failure of the corporations to pay interest, the general improvement law provided that a receivership should continue until the unpaid installments of interest had been satisfied. The investment of the bondholders was based on the continuance of their security for the life of the principal debt; they were not to be forced to call in their loans for non-payment of interest, but were to be entitled to all the benefits which could accrue from the property. There was a like provision for defaults in sinking fund payments, as for failure to pay interest. These were the rights of the bondholders, fixed by the contract in the general improvement law. The amendment of that law, providing for a sale for non-payment of interest installments, was enacted in 1867. The amendments to a similar purport, for non-compliance with the sinking fund requirements, were not sought to be enforced by the acts in question, for the sale of delinquent roads for the non-payment of interest, nor did those sinking fund provisions contemplate a sale of the roads.

Your orator shows, that the said acts sought to alter and impair the contract with the internal improvement bondholders, contained in the general law of 1852. They were a violation of the federal constitution, and conferred no right or authority on the commissioners to make the sales referred to, and could not enable them to give any title to purchasers thereof, save and except, it may be, in

trust, for your orator and the other holders of the internal improvement bonds issued by the State of Tennessee to the Memphis, Clarksville, and Louisville Railroad Company.

Your orator shows, that the acts purporting to confer jurisdiction of a judicial nature, as hereinafter set forth, violated the constitution of Tennessee, and were and are not laws of the land, and gave no jurisdiction to entertain the said special proceeding. For so it is that the constitution of the State of Tennessee provides against the passage of special laws inconsistent with the general laws of the land.

Your orator further shows that said acts likewise attempted to constitute a court of special andl limited jurisdiction. They defined its powers, and did not authorize any notification of the proceedings to be given to the holders of the State bonds issued to the companies. Without such authority no such notice could be given with any legal effect. The act prescribed a tribunal, which proceeded to pass upon the rights and property of the internal improvement bondholders without any provision for enabling them to be heard in defense of their rights. The said proceeding is void as respects the rights of the internal improvement bondholders, and they are entitled absolutely to disregard it.

The acts violated the constitution of Tennessee, and were void, because they sought to constitute a court of an officer who had already, as counsel, given an opinion upon the questions which it was sought to have formally adjudged, and that opinion was in favor of the views which the legislature sought to enforce.

The said acts also violated the Constitution of Tennessee in this, that they attempted to confer power, in its character non-judicial, upon a judicial tribunal.

Your orator shows that the said acts could not confer any judicial power to determine or adjudicate upon questions that might arise in the future. No judicial power exists for any such purpose, nor any judicial machinery

which can be lawfully used therefor. Neither a legislature nor a court can create questions for the purpose of predetermining them and cutting off the rights of parties not aware of such a sham proceeding. In all the above respects the legislature did, in legal effect, provide only for the opinion of Edward H. East individually, and as advisory to those who were about to risk moneys in the attack upon the security of the internal improvement bondholders.

In all the above respects, those portions of the statutes in reference to judicial proceedings were void. They did not create any court or authority, or give any validity to the proceeding contemplated.

Your orator shows that, pending the said sales by the legislative commissioners, it was deemed advisable to elicit an expression of opinion from an incumbent of some judicial office in the State of Tennessee, in reference to the vailidity of the attack made upon the liens and rights of the internal improvement bondholders.

The general improvement law of 1852 provided that when a bill should be filed to obtain a sale of the roads in the enforcement of the lien of the bonds issued to them, and to receive the payment of said bonds, with the interest thereon, the proceeding should be instituted in the Chancery or Circuit Court of the county in which is situated the place of business of said company.

Your orator shows that about the time of the passage of the act hereinafter referred to, and during the year 1870, an opinion of Edward H. East and others, counsel for the Nashville and Decatur Railroad Company (the Nashville and Decatur Railroad Company being one of the corporations whose roads had been built with the moneys of bondholders who had purchased the bonds issued to it and its several integral parts), had been printed and extensively circulated in the State of Tennessee, That opinion was to the effect that the lien of the bonds on the several roads to which they were issued, and which lien was vested in the State for their payment, was the absolute and peculiar prop-

erty of the State of Tennessee, which she could treat in any manner she saw fit, without regard to any trust in favor of the bond-holders.

Edward H. East had become the Chancellor or Judge of the Chancery Court at Nashville, and then and thereupon the General Assembly enacted that a bill "shall be immediately filed in the Chancery Court at Nashville," although Nashville was not within the county wherein the places of business of nearly all said companies were situated. The said Court was adopted as a special tribunal for the purposes of the act, and "invested with exclusive jurisdiction to hear, adjudicate, and determine all questions of law and matters of controversy of whatever nature, whether of law or fact, that have arisen, or that may arise," in respect to the subject-matter therein referred to.

The act proceeds: "The judge of said Court is hereby empowered and especially requested to appoint a special term of said Court, to be held on the first Monday in March, 1871, for the purpose of expediting a speedy determination of the various matters contemplated by this act."

The parties defendant to the bill are to be "all the delinquent companies, the respective stockholders, holders of the bonds, creditors, and all persons interested in the said several roads."

The questions whose determination was sought to be anticipated and foreclosed were those to arise between the State and any or all of the parties interested in said roads;" and the judge was "to define as may be thought proper what shall be the rights and duties and liabilities of a purchaser of the State's interest in said roads."

Without exception as to fact or law, it was further provided that "the parties, or any of them, may, in person or by attorney, with the consent of the attorney for the State, make an agreed case, submitting all such questions as they may think proper to the immediate decision of the Court."

The time for prosecuting an appeal or writ of error was limited to thirty days from final decree, "in view of

the urgent public necessity for a speedy determination." In case of appeal or writ of error, the Supreme Court "is specially empowered and respectfully requested to take up, and finally dispose of the case, in preference to all other cases on the docket, and, if not in session, to appoint a special term for the immediate hearing of the same." But your orator shows that all of the above ceremony was to be "preliminary to a sale of the State's interest in the road, as declared by the said act."

There was no provision in the acts for making any of the holders of the internal improvement bonds parties to the said proceeding. By the amended bill in the cause, the complainant alleged that it could find only one holder of the State bonds issued by any of the delinquent railroads. This single holder of a single bond on but two out of eleven of these roads was made a defendant, and an order of publication directed for "holders of bonds issued by the State to said companies," to be made in two Nashville newspapers.

Dempsey Weaver, the bondholder aforesaid, filed a form of answer in which "this respondent submits to the honorable court the whole question of his rights and lien, if any, in said roads."

On the 6th day of July, 1871, a decree was entered, reciting as follows:

> "It further appearing that of the roads whose debts have thus been ascertained, the East Tennessee Company and Western North Carolina Railroad have declined a contest with the State in regard to the sale of the State's interest in its road, and a decree has been rendered accordingly for a sale of such interest by the commissioners at once; that all the residue of said companies, except the Southwestern Railroad Company, have consented to a sale of their said several roads, with all their rights, privileges, and franchises, and decrees have been entered accordingly, preference for a limited time being, by such decrees, conceded to the said companies respectively, and then to their stockholders, or such of them as choose to join in the purchase, to become

the purchasers of their said several roads at the minimum price fixed by the Court, in accordance with the act of December 21, 1870, chapter 23, and that a decree has been made for a sale of the South-western Railroad Company. It further appearing that it is made the duty of this Court, by the said act, to adjudicate and determine all questions of law and matters of controversy of whatever nature, whether of law or fact, that have arisen, or may arise, touching the rights and interest of the State, and also of the stockholders, bondholders, creditors, and others, in said roads, and likewise to define, as may be thought proper, what shall be the rights, duties, and liabilities of a purchaser of the State's interest in said roads, or either of them, and what shall be the reserved rights of said companies, stockholders, and others, respectively, as against said purchasers, after such sale, under the existing laws of the State; and it further appearing to the satisfaction of the Court, that the holders of the State bonds issued by the State to the said several companies are properly made defendants to this suit, and are sufficiently represented by the holders of such bonds as are made defendants by name, or have come in and answered."

Your orator shows that the proceedings before Chancellor East are null and void, and do not constitute any bar of the rights of the complainant, inasmuch as the bill was filed by a trustee, in disaffirmance of his trust, and preliminary to an attempted destruction of the trust security for his own advantage. In that proceeding the *cestuis que trust* were necessary parties. The statute gave no authority to bring them into the cause, and the service and publication and appearance were *coram non judice*, and lent no authority to the judgment which was entered.

The proceedings were not judicial, nor within the jurisdiction of the Court, but were purely matters of convention and agreement, as appears on the face of the decree itself.

There was no Court organized under the constitution of Tennessee, because Edward H. East, the sole presiding

judge, had given an opinion as counsel in favor of the claims, which the State sought to exercise.

And so it was that the said Edward H. East proceeded to reiterate from the bench an opinion to the same effect as the one he had pronounced as counsel. And the Louisville and Nashville Railroad Company, being the lessee for years of the said Nashville and Decatur Railroad Company, availed itself of the said opinions to become the purchaser of one of the largest properties sold by the commissioners, to wit, the Memphis, Clarksville and Louisville Railroad.

The Court had no authority to confirm the sales made by the commissioners, and all its action in that respect was *coram non*.

Your orator shows that the litigation was purely fictitious. The chancellor confessedly passed upon all questions that might arise after everything had been consented to, and there were no questions before him.

Your orator shows that the entire transaction, both in its legislative and judicial forms, exhibits violations of trust and patent fraud, and binds the purchasers of the property as trustees for the Internal Improvement bondholders.

The complainant sought an expression of opinion from an officer of Court, to facilitate her in obtaining a better price for property of which her legislature had directed a sale to take place for her sole benefit, and in violation of her trust. This sale was accompanied by a ceremonious litigation, but was not made by virtue of the same, nor was any power conferred on the Court to prevent or in any manner affect the sale or the receipt of the trustees' obligations for the property of her *cestuis que trust*. The defendants united in this purpose, and consented to its being carried out, upon condition that they should have the advantages of it, by delivering depreciated State obligations at their face value for them. Other benefits were to be received by the corporations and their stockholders, as appears from the record of the proceedings, of which your orator will bring proof on the hearing. The expenses of

the respondent were, by like consents, paid out of the proceeds of the property.

The Memphis, Clarksville and Louisville Railroad was purchased by the Louisville and Nashville Railroad Company, a corporation that had also benefited from the sale of internal improvement bonds. The purchased road is now possessed and operated by the said purchaser, consolidated with other corporations, under the name of the Louisville, Nashville and Great Southern Railroad Company.

Your orator further avers and shows that the said pretenses and claims are illegal, void, and fraudulent. The defendants never had, nor have they, any right to affect or impair the contract and lien which was created and entered into by and between the holders of the internal improvement bonds loaned by the State of Tennessee to the railroad company, and the State of Tennessee as trustee of the said lien or mortgage, and the railroad company as the debtor under the said contract and lien.

Your orator further charges that by the terms of the general improvement law of February 11, 1852, the State of Tennessee constituted herself the trustee for whomsoever might become the holders of the bonds loaned to the several railroad companies named in the act. The terms of that trust were defined and set forth in the sections of the statute.

By the acceptance of the bonds, and the use of their proceeds by the Memphis, Clarksville and Louisville Railroad Company, a mortgage lien attached to the property of the company, without a deed from the company, and the conditions of that mortgage were as prescribed in the statute. By the purchase of the said bonds, the holders thereof became entitled, by contract, to the lien rights set forth in the internal improvement law. That lien was distinctly specified to be for the payment of the principal and interest of the bonds issued to them.

Your orator charges that the acts, of date subsequent to the issuance of said bonds, in so far as they attempt, or may be construed to have authorized the satisfaction of the

statutory lien established for the benefit of the holders of the internal improvement bonds of Tennessee loaned to the said company, by any other means than payment, impaired or sought to impair the obligation of the contract aforesaid, and were in violation of the federal constitution, and void, and all acts committed thereunder are illegal and null.

And your orator furthermore shows that no advisory proceeding of a chancellor, declaring his opinion of the legal effect of the acts of the Tennessee General Assembly, and of the execution of those acts, can affect your orator's rights and those of the other internal improvement bondholders, especially when he and they were not parties to the proceeding nor cognizant of its existence, and when the opinion of the sole presiding judge had already been elicited as counsel adversely to the rights of the bondholders.

Your orator likewise shows that, by virtue of his right in equity as a lienholder and the terms of the statutory mortgage above described, he is entitled to have the possession of the Memphis, Clarksville and Louisville Railroad, in the State of Tennessee, secured by a receivership, for the benefit of the holders of the internal improvement bonds aforesaid, issued to the Memphis, Clarksville and Louisville Railroad Company, and for the payment of the interest thereon, for which the said company became bound. The receiver or receivers so to be appointed should apply the revenues of the property to the payment of the overdue interest on said bonds.

Your orator shows that the officials of the State of Tennessee, named in the internal improvement law for the execution of the trusts pertaining to the statutory receivership, to wit, the comptroller and the governor, claim to be bound by the subsequent acts of the General Assembly of Tennessee, passed in the years 1870 and 1871, to abstain from any action toward the enforcement of said trust, and your orator is unable to obtain the action of the said officials, or of the State of Tennessee, as trustee for the execution of the trusts aforesaid. Your orator shows that he is remediless at law and without the intervention of a court of equity.

Wherefore, your orator prays that the priority of the said lien of the internal improvement bonds and coupons aforesaid, upon all the railroad equipment, incomes, tolls, rights, privileges, property, and franchises of said Memphis, Clarksville and Louisville Railroad Company, within the State of Tennessee, may be established above all other claims and demands, as constituting the first and paramount incumbrance on said property and rights. That the income of said property, arising from its use in said State, may be applied to the payment of interest accrued and to accrue upon the bonds hereinbefore described, and as may appear by proofs before a master to be still outstanding and unpaid. That the said property may be seized by order of this Court, and placed in the hands of receivers, to be administered according to the liens and trusts declared upon it, and to which it has been pledged and covenanted to be applied.

And, may it please your Honors, to grant unto your orators such further or other and different relief in the premises, as the nature of the case may require, and be consistent with equity and good conscience.

May it please your Honors, to grant unto your orator writs of subpœna of the United States of America, to be directed to the said Memphis, Clarksville and Louisville and the Louisville, Nashville and Great Southern Railroad Companies, and against all other persons interested in this matter and amenable to the jurisdiction of this Court, when discovered, thereby commanding them and every one of them, at a certain day and under a certain penalty therein to be specified, personally to be and appear before your Honors, in this honorable Court, and then and there to answer all and singular the premises, and to stand to, perform, and abide such orders and decrees therein as to your Honors shall seem meet.

E. L. ANDREWS and GEORGE HOADLY,
Solicitors, and of Counsel for Complainant.

APPENDIX.

Exhibit B.

ACT OF FEBRUARY 8, 1854.

AN ACT to amend an act passed 11th February, 1852, entitled "An Act to establish a system of Internal Improvement in this State."

SEC. 1. *Be it enacted by the General Assembly of the State of Tennessee,* That the bonds of the State shall issue to the companies mentioned in the first and tenth, and nineteenth sections of the act which this is intended to amend, and also to the "Edgefield and Kentucky Railroad Company," "Central Southern Railroad Company," "Knoxville and Charleston Railroad Company," Mississippi Central and Tennessee Railroad Company," "Knoxville and Kentucky Railroad Company," "Tennessee Western and Charleston Railroad Company," and "Cincinnati, Cumberland Gap and Charleston Railroad Company," *upon the terms and conditions mentioned in the act which this is intended to amend,* but to the extent of ten thousand dollars (instead of eight thousand) per mile. *Provided,* that the aid of the State shall be extended to the South Carolina, Tennessee and Kentucky Railroad Company, in lieu of the Knoxville and Charleston Railroad Company, to the extent of fifty-five miles, and no more, in the event the Blue Ridge Railroad Company of South Carolina shall adopt the charter of said South Carolina, Tennessee and Kentucky Railroad Company, and obligate themselves in such manner as shall be satisfactory to the Governor, not to stop the construction of the said road at a junction with the East Tennessee and Georgia Railroad, but to build said road to South West Point; and said South Carolina, Tennessee and Kentucky Railroad Company, before it shall receive the aid herein provided, shall bring itself within the general provisions in all respects, of the act which this is intended to amend. But should the Blue Ridge Railroad Company not adopt such charter, and enter into the obligations aforesaid, then the provisions of this act and that which it is intended to amend, shall apply in all things to the Knoxville and Charleston Railroad Company.

SEC. 2. *Be it further enacted,* That bonds of the State shall issue to the companies mentioned in the first section of this act, and the tenth and nineteenth sections of that which this is intended to amend, for each bridge that said companies, or either of them, may have to build in East, Middle, and West Tennessee, across the Holston, Clinch, Big Hatchie, Tennessee, and Cumberland rivers, for the maximum sum that bonds are provided to be issued to said East Tennessee and Georgia Railroad Company, by an Act passed February 4, 1852, entitled, "An Act to aid in the completion of the East Tennessee and Georgia

Railroad," and upon the terms and conditions mentioned in said Act (except the 2nd section), and also in the fifth and sixth sections of an Act, passed February 25, 1852, entitled "An Act to charter the Chattanooga, Blue Spring, and Cleveland Railroad Company, and for other purposes," and said bonds to be issued under this section shall be included in the aggregate amount of stock raised by said companies in the same manner that the three hundred thousand dollars of bonds loaned to the East Tennessee and Virginia Railroad Company, under an Act, passed January 15, 1852, to enable said company to build bridges, are provided to be included in the aggregate amount of stock to be raised by the East Tennessee and Virginia Railroad Company.

SEC. 3. *Be it further enacted*, That the office of "Commissioner of Roads" be filled by the appointment of the Governor; that the incumbent shall hold his office for two years, and shall receive an annual salary of two thousand dollars. It shall be his duty to examine into the condition of railroad companies applying for the bonds of the State, and to report on oath to the Governor, the condition of said roads and the companies owning them; inquiring into and reporting all the facts necessary to be reported upon under this Act, and that which this is intended to amend. He shall further superintend and supervise the interest of the State in all the railroads and turnpike roads of this State, and whenever he may deem it necessary, report to the Governor any facts he may believe to be of importance to said interest. The said commissioner, in making his investigations, shall have the power to administer oaths, and send for persons and papers; and may, if in the opinion of the Governor it should be necessary and proper, apply to the Courts for aid to protect said interests; and it shall not be lawful for the Governor to issue such bonds to any railroad company until he shall be satisfied they have complied with the law.

SEC. 4. *Be it enacted*, That if any officer, agent, or servant of any railroad company receiving the bonds of the State, shall appropriate said bonds or the money arising from the sale thereof, or any portion of either, to any other use than that prescribed in the Act under which said bonds shall be issued, such person or persons so offending shall be deemed guilty of a felony, and, upon conviction, shall undergo confinement in the penitentiary for a period of not less than five nor more than fifteen years.

SEC. 5. *Be it enacted*, That no road embraced in this Act shall be entitled to its provisions, unless it shall, within four years, grade one section of thirty miles.

SEC. 6. *Be it enacted*, That the Governor shall indorse and guarantee the bonds of the Nashville and Chattanooga Railroad Company to an amount not exceeding six hundred and fifty thousand dollars, and the State shall thereupon, by virtue of this Act, be invested with a lien

upon the entire road of said company, with all its equipments, fixtures, etc., and shall have the same remedies for enforcing said lien as are given by previous Acts of the General Assembly directing an indorsement of the bonds of said company. The provisions of this Act shall extend to all railroad companies mentioned in the aforesaid Act, passed February 11, 1852, whose charters, routes, or names have been, or may hereafter be, changed; and if any two or more of said companies shall be consolidated, they, or the consolidated company, shall still be entitled to the provisions of this Act.

SEC. 7. *Be it further enacted*, That the Mississippi Central and Tennessee Railroad Company shall be entitled to the provisions of this Act from Jackson, Tennessee, to the Tennessee river, for any extension of said road which said company may make from Jackson by way of Huntingdon in the direction of Nashville. And, *provided further*, that nothing in this Act shall be so construed as to extend the time for the completion of the first section of the roads mentioned in the said Act of 11th February, 1852.

SEC. 8. *Be it enacted*, That the bonds to be issued under the provisions of this Act shall, *in no case be sold at less than par.*

SEC. 9. *Be it further enacted*, That the first section of an Act, passed February 11, 1852, entitled "An Act to establish a system of internal improvements in this State," be so amended that whenever the East Tennessee and Virginia Railroad Company shall have graded and shall have ready to put down the necessary timbers for the reception of rails, as is contemplated in said section, from Knoxville to the Holston river at Magbie's ferry, or to the Holston river at Middletown, at each end, it shall be the duty of the Governor to issue bonds of the State to the company, as is required in said section, and when said company shall have complied with the above requisitions, it shall be considered as fulfilling the requirements in full of the first section of the Act above referred to.

SEC. 10. *Be it enacted*, That the provisions of this Act shall extend to and embrace the Mississippi and Tennessee Railroad Company, chartered 5th December, 1853, and the State aid given to other roads by this Act shall be given in like manner to the said Mississippi and Tennessee Railroad, so far as the same lies in the State of Tennessee.

SEC. 11. *Be it enacted*, That the farther time of two years is hereby extended to the Southwestern Railroad Company to bring themselves within the provisions of the Act entitled "An act to establish a system of internal improvements in this State."

SEC. 12. *Be it further enacted*, That this Act shall take effect from and after its passage.

WM. H. WISENER,
Speaker of the House of Representatives.
EDWIN POLK,
Speaker of the Senate.

ACT OF FEBRUARY 17, 1854.

AN ACT to amend the charter of the Memphis and Somerville Turnpike Company, and for other purposes.

. . . . . .

SEC. 5. *Be it enacted*, That the fourth section of an Act to establish a system of internal improvements in this State be amended by striking out the word *twenty* wherever it occurs in said section, and inserting the word *ten*, so as to allow all the railroad companies entitled to the benefits of said act, and an Act, passed February 8, 1854, as an amendment thereto, to obtain the bonds of the State upon sections of *ten* miles instead of *twenty* miles, after the first section of thirty miles has been completed.

WM. H. WISENER,
Speaker of the House of Representatives.
EDWIN POLK,
Speaker of the Senate.

ACT OF JANUARY 19, 1855.

AN ACT to amend the Internal Improvement Acts of 1852 and 1854.

SEC. 1. *Be it enacted by the General Assembly of the State of Tennessee*, That hereafter it shall not be necessary for the Engineer-in-Chief to swear to the subscription list, solvency, and condition of any railroad company applying for State aid, but the oath required of the Engineer shall be taken by the President and Treasurer of the company, whose duty it is to know of the condition, solvency, and financial affairs of said company.

SEC. 2. *Be it further enacted*, That it shall be lawful and proper for the East Tennessee and Virginia Railroad Company to lay down iron at either end of said road, and to draw the bonds of the State according to the General Internal Improvement Act, passed February 11, 1851–2, and the Act of February, 8, 1853–4.

SEC. 3. *Be it enacted*, That the fifth section of the Act of February 17, 1854, be so amended that hereafter the bonds of the State may is, sue for ten miles or more of road graded, as required by existing laws, after the completion of the first thirty miles.

SEC. 4. *Be it further enacted*, That so much of the General Internal Improvement Acts of 1851–2, and 1853 and 1854, as requires the several railroad companies embraced within the provisions of the aforesaid Acts to have the bridges, abutments, and embankments on the several sections of their respective roads completed before the bonds of the State shall issue to the companies of said roads, be so amended as to accept those bridges, abutments, and embankments which have been provided with State aid.

SEC. 5. *Be it enacted,* That this Act shall take effect from and after its passage.

NEILL S. BROWN,
Speaker of the House of Representatives.
EDWARD S. CHEATHAM,
Speaker of the Senate.

Exhibit C.

$1,000. $1,000.

No. UNITED STATES OF AMERICA. No.

Know all men by these presents: That the State of Tennessee acknowledges to owe to , or order, One Thousand Dollars of the lawful money of the United States of America, which the said State promises to pay in the city of New York, on the day of , 18 , with interest thereon, at the rate of six per cent. per annum, according to the tenor, and upon the presentation of the coupons hereunto attached. For the payments of said sums of money, and the interest thereon, at the times and places, and in the manner aforesaid, the faith of the said State of Tennessee is irrevocably pledged, this bond being issued in pursuance and by authority of an act of the General Assembly of said State, passed February 11th, 1852, to establish a system of Internal Improvements in said State.

In testimony whereof, and in pursuance of the acts aforesaid, I, , Governor of the State of Tennessee, have hereunto subscribed my name officially, and caused the same to be countersigned by the Secretary of State, with the great seal of the State affixed.

[ ] Done at the Executive Department in the city of Nashville, this day of , 18 .

To which was attached the following form of coupon:

30. THE TREASURER OF THE STATE OF TENNESSEE. **30.**

Will pay the bearer THIRTY DOLLARS, in the city of New York, on the first day of January, 1877, being the semi-annual interest then falling due on bond No.

J. C. SUTTRELL, 30.
Comptroller.

Exhibit D.

ACT OF JULY 5, 1870.

AN ACT authorizing the sale and transfer of the interest of the State in delinquent railroad companies.

WHEREAS, Under an act of the General Assembly of the State of Tennessee, passed December 7, 1867, entitled "An Act to amend the Internal Improvement Laws of this State, passed February 11, 1852," the Governor, Secretary of State, and Comptroller are empowered, in their discretion, upon the failure of any of the railroad companies mentioned in said act, "for two consecutive years, to pay the interest that may accrue upon the bonds loaned to them severally," to sell the railroad track, railing, rolling stock, etc., upon such terms and conditions as they may deem best to secure the interest of the State, "and shall retain of the proceeds of said sale the amounts loaned to said companies, and the interest due on the same, with expenses of said sale;" and,

WHEREAS, "The time has arrived when it is necessary to protect the interests of the State, and to secure the State from loss, in consequence of the issuance of bonds to the several railroad companies of the State, that a sale should be made of the interest of the State in each and every railroad company in this State, which has heretofore failed to pay the interest that has accrued on the bonds of the State loaned to it, or which may hereafter fail to pay the interest as it accrues on the bonds of the State loaned to it;" and,

WHEREAS, It is important to relieve the people of the burden now upon them, and by wise legislation endeavor to restore the public credit, which can be done by a proper enforcement of the legal rights of the State of Tennessee as against said railroad companies so in default; therefore,

SECTION 1. *Be it enacted by the General Assembly of the State of Tennessee*, That the Governor of the State, Secretary of the State, and Comptroller of the Treasury, and Robert J. McKinney, of Knox county; Francis B. Fogg, of Davidson county, and Archibald Wright, of Shelby county, be, and the same are hereby appointed commissioners to sell the interest of the State of Tennessee in all the railroad companies of the State, "to whom the bonds of the State have been loaned, by the act of December 7, 1867, or former acts, and which have failed, for two consecutive years, to pay the interest that have accrued upon bonds loaned to them severally;" and also in all railroad companies that may hereafter fail to pay the interest that may, or has, accrued on the bonds loaned to them severally, or that are now in default of payment of the interest which has accrued upon the bonds loaned to them severally, with full authority to make and perfect said sales in all cases where the said commissioner can dispose of the in-

terest of the State of Tennessee in the defaulting railroad, for a sum of money equal to the amount of the bonds of the State of Tennessee, with unpaid interest due upon them, and which bid may be discharged and satisfied by an equal amount of the bonds of the State of Tennessee, with accrued interest, legally issued by the State of Tennessee, in aid of said railroad company, or for any other purpose, and with full power to place the purchaser or purchasers in the quiet possession of the railroad so purchased.

SEC. 2. *Be it further enacted*, That if any receiver, who shall have control of any or either of the railroads of the State, and which road may be sold by the commissioners, under the first section of this act, shall refuse to give possession of said railroad track, railing, rolling stock, etc., to the purchaser, upon demand the Governor of the State shall issue his warrant to the sheriffs of the different counties through which the road may run, commanding them to put the purchaser or purchasers in possession of the railroad, its property and effects, and the receivers so refusing shall be guilty of a high crime, and, upon conviction, shall be fined in a sum of not less than one thousand dollars, and imprisoned at the discretion of the court.

SEC. 3. *Be it further enacted*, That in the event said commissioners can not sell said defaulting railroads, or either of them, for the amount and upon the terms as prescribed in the first section of this act, then the said commissioners are authorized, after giving such public notice as they may deem advisable or necessary, to receive sealed bids from any person, persons, or corporation for the purchase of either of the delinquent railroads of the State, and, after giving thirty days' notice of the time and place, shall open the bids so made, and the said commissioners will report to this or some subsequent General Assembly the best bid offered, with such recommendation as to them may seem best for the interest of the State, for the approval or rejection of the General Assembly.

SEC. 4. *Be it further enacted*, That no less than four of the commissioners named in this act shall be competent to perform any duties required by this act.

SEC. 5. *Be it further enacted*, That the commissioners, in making a sale of the interest of the State in any of the railroads, shall give the preference to the purchaser or purchasers, who will obligate himself or themselves, to operate the road so purchased over its entire line, from terminus to terminus; and that as the public welfare demands it, this act shall take effect from and after its passage.

Passed July 1, 1870.

W. O'N. PERKINS,
Speaker of the House of Representatives.
D. B. THOMAS,
Speaker of the Senate.
D. W. C. SENTER,
Governor.

ACT OF DECEMRER 22, 1870.

An Act to Amend the Act of 1870, chapter 79, for the sale of Interest of the State in Delinquent Railroad Companies, passed July 1, 1870.

WHEREAS, In the recent attempt to sell the State's interest in said roads, various legal questions arose, presenting serious obstacles to a sale under the act of 1870, which it is deemed expedient and necessary to obviate before the interest of the State in said roads shall be again offered for sale; and, *whereas*, by the act of 1862, chapter 151, section 12, the right is expressly reserved to the State to enact all such laws in the future as shall be deemed necessary to protect the interest of the State, and to secure the State against any loss in consequence of the issuance of bonds under the provisions of said act, in such manner as not to impair the vested rights of stockholders of the companies, therefore,

SECTION 1. *Be it enacted by the General Assembly of the State of Tennessee*, That a bill shall be immediately filed in the Chancery Court at Nashville, in the name and on behalf of the State, to which all the delinquent companies, the respective stockholders, holders of the bonds, creditors, and all persons interested in the said several roads, shall be made parties defendant, and shall be brought before the Court, in the mode prescribed by the rules of practice in chancery established in the State, except as otherwise herein provided. And said Court is hereby invested with exclusive jurisdiction to hear, adjudicate, and determine all questions of law and matters of controversy, of whatever nature, whether of law or of fact, that have arisen or that may arise touching the rights and interest of the State, and also of the stockholders, bondholders, creditors and others in said roads; and to make all such rules, orders, and decrees, interlocutory and final, as may be deemed necessary in order to a final and proper adjustment of the rights of all the parties, preliminary to a sale of the interest of the State in said road. Also, to declare the exact amount of indebtedness of each of said companies to the State; and likewise to define, as may be thought proper, what shall be the rights, duties, and liabilities of a purchaser of the State's interest in said roads, or either of them, and what shall be the reserved rights of said companies, stockholders, and others respectively, as against said purchasers, after such sale, under the existing laws of this State.

SEC. 2. *Be it further enacted*, That the judge of said Court is hereby empowered, and specially requested to appoint a special term of said Court, to be held on the first Monday in March, 1871, for the purpose of expediting a speedy determination of the various matters contemplated by this act; and it shall be the duty of the clerk of said Cuort, immediately on the filing of said bills, to issue process and make publication in the manner before indicated, requiring the defendants to

appear at said special term; and the defendants shall be severally required at said term to put in such defense to said bills as they may respectively deem proper, provided that it is consistent with the code. And in order to save expense, said parties, or any of them, may, in person or by attorney, with the consent of the attorney for the State, make an agreed case, submitting all such questions as they may think proper, to the immediate decision of the Court. And it is further provided, that in the discretion of the Court, formal pleadings may be dispensed with by a simple statement on the record of the points or matters relied upon by the parties, and sought to be decided by the Court.

SEC. 3. *Be it further enacted*, That if an account, on behalf of either of the parties, shall seem to the Court proper and necessary, touching any matters of fact in issue between the parties, an immediate reference of the same shall be made to the clerk and master, or, if thought preferable, to such special commissioner as the Court may appoint, who shall proceed at once to take such account, and make a report to an adjourned term of the Court, within such period as the Court shall limit, not exceeding twenty days from the date of the decree ordering the account. And at such adjourned term final action shall be had upon said report. But the taking of such account shall not postpone the determination of all such questions of law presented by the parties as are not involved in the matters of account ordered to be taken.

SEC. 4. *Be it further enacted*, That competent counsel shall be retained on behalf of the State, by the commissioners, whose duty it shall be, immediately on the passage of this act, to file a bill in said Chancery Court, so framed as to elicit a determination by the Court of all questions of law and matters of controversy now existing, or that may hereafter arise between the State and any or all of the parties interested in said roads, and to conduct the suit and superintend its progress, with a view to the speediest practicable determination; and for such services said counsel shall be paid a fair compensation out of the public treasury.

SEC. 5. *Be it further enacted*, That, upon a final decree being made by the Chancellor, settling the rights of the parties, either party shall have the right of appeal on writ of error to the Supreme Court, in the usual mode, except that the time for prosecuting a writ of error is hereby limited—in view of the urgent public necessity for a speedy determination—to thirty days from the final decree, and in case of an appeal or writ of error to the Supreme Court, a transcript of the record, or such part thereof as may be thought necessary, shall be filed in the office of the Supreme Court at Nashville, within said period of thirty days.

SEC. 6. *Be it further enacted*, That in the case of an appeal or writ of error to the Supreme Court, as herein provided for, the judges thereof,

in view of the pressing exigencies of the State, are hereby specially empowered, and respectfully requested, as soon as the transcript of the record shall be filed in the office of said Court, if then in session, to take up and finally dispose of the case, in preference to all other cases on the docket, and if not in session, to appoint a special term for the immediate hearing of the same.

SEC. 7. *Be it further enacted*, That in case any of the said railroad companies should decline a contest with the State in regard to the sale of the State's interest in their roads, a sale may at once be made, and, upon the final determination of any controversy that may arise between the State and any of said railroad companies in the Chancery or Supreme Court, the interest of the State in such roads shall immediately be brought to sale by the commissioners.

SEC. 8. *Be it further enacted*, That a specific value shall be fixed upon the State's interest in each of said roads by the decree of the Court, and the commissioners shall be authorized to dispose of the same at such valuation, either at public or private sale, as they may judge most advisable; and if a sale of any of the roads can not be made at such valuation, the same shall be sold for the highest price that can be obtained.

SEC. 9. *Be it further enacted*, That the interest of the State in either of said railroad companies may be sold on time, and the amount agreed to be paid by the purchasers may be discharged in any of the outstanding legal bonds of this State; but a sale on time shall be upon the following express conditions: The purchaser at the time of sale shall pay, or deliver to the governor, at least one-fourth of the amount agreed to be paid, in legal bonds of the State, and shall execute a bond with sufficient security to the governor for the delivery of the remainder of the bonds to be paid at intervals of one, two, and three years from the date of the sale, in like legal bonds of the State, and also to pay into the treasury from the time of his purchase an amount equal to the interest accruing semi-annually from the remaining three-fourths of the bonds, to be thereafter delivered by him, until the whole amount shall be delivered to the Governor, said interest to be paid as the bonds mature; and it is expressly declared that the failure of the purchaser to pay or deliver to the Governor any subsequent installment of bonds as above provided, when the same shall fall due, shall work an absolute forfeiture to the State of all and every payment previously made; and, in addition, his interest in such road shall be resold by the commissioners, after forty days' notice, to meet the default in payment by him.

SEC. 10. *Be it further enacted*, That upon the sale of any of the franchises of either of the railroad companies, by the commissioners, under the provisions of this Act, all the rights, privileges, and immunities appertaining to the franchise so sold under its Act of incorpora-

tion, and the amendments thereto, and the general improvement law of the State and Acts amendatory thereof, shall be transfered to and vest in such purchaser, and the purchaser shall hold said franchise, subject to all liens and liabilities in favor of the State, as now provided by law against the railroad companies.

SEC. 11. *Be it further enacted*, That whenever hereafter, any existing railroad company, to which bonds of the State have been issued or loaned, or any railroad company to be hereafter created, shall fail to pay the State the interest due thereon, for the benefit of the bondholders, or should fail to pay in as required by law, the sinking fund, they may be proceeded against, in the Chancery Court at Nashville, in the same manner as above provided in regard to existing delinquent railroads.

SEC. 12. *Be it further enacted*, That this Act shall take effect from and after its passage, the public welfare requiring it.

Passed December 21, 1870.

W. O'N. PERKINS,
Speaker of the House of Representatives.
D. B. THOMAS,
Speaker of the Senate.
D. W. C. SENTER,
Governor.

AN ACT to enable the Railroad Commissioners for the State, for the sale of delinquent railroads, to perfect their sales, and place the purchasers in possession. Passed November 17, 1871.

Whereas, The Commissioners are hindered to some degree in the final consummation of one or more of their contracts of sale, by reason of litigation on the part of adverse claimants; and

Whereas, In one or more instances of sale, the option is reserved to the purchaser or purchasers of taking the interests of the State, in the road contracted to be purchased by him or them; and

Whereas, It is manifestly to the interest of the State that the work entrusted to the said Commissioners should be completed at the earliest day practicable; therefore,

SECTION 1. *Be it enacted by the General Assembly of the State of Tennessee*, That with the view of removing all embarrassments and facilitating the accomplishment of the purposes above indicated, the said Commissioners, viz: the Hons. Robert J. McKinney, Francis B. Fogg, Archibald Wright, the Governor, the Comptroller, and the Secretary of State, or a legal quorum of their number, be and they are hereby authorized and fully empowered to make and carry into full effect, on the part of the State, any settlement or adjustment with parties liti-